

(2) The provider must provide FmHA or its successor agency under Public Law 103-354 with reasonable assurances that tenants receiving the PRA will not be displaced when the PRA expires.

(3) In accordance with §1944.215(w)(2)(ii) of this subpart, it must be demonstrated that for the term of the loan remaining after PRA is no longer available, an adequate rental market exists for the project without the assistance.

(4) For complexes with LIHTC, if the PRA term is less than the LIHTC compliance periods, the marketability of the PRA units must be further demonstrated by either:

(i) Demonstrating that there are sufficient households within the LIHTC income limits to support the units without rent overburden; or

(ii) The applicant's certification that the targeted percentage of LIHTC units (not the minimum set-aside option) does not include the PRA units, so that the units will be marketable to households in all FmHA or its successor agency under Public Law 103-354 income ranges.

(c) *Review and recommendations.* The documentation, the MOU, and the PRA agreement will be submitted to the servicing official for review. If acceptable, the servicing official will submit the proposal for similar review to the State Office and submission to the National Office. Proposals forwarded to the National Office will contain the recommendations of the District and State Director.

[58 FR 44272, Aug. 20, 1993, as amended at 59 FR 6897, Feb. 14, 1994]

§1944.233 Participation with other funding sources.

In order to develop the maximum number of affordable housing units and promote partnerships with states, local communities, and other partners with similar housing goals, RHS participation loans are encouraged.

Apartment complexes developed with participation funds may serve lower income households exclusively (RHS very-low and low income-eligible households; LIHTC income-eligible households) or may be marketed to households with mixed incomes. The following will apply:

(a) *RHS loan and rental assistance (RA) participation.* (1) RHS may participate with loan funds only, or with both RA and loan funds, as provided in paragraphs (a)(2) and (a)(3) of this section.

(2) If RHS RA is being provided, RHS loan participation should equal at least ten percent of the project's total development cost unless authorization for a lower percentage of participation is obtained from the National Office in accordance with §1944.240.

(3) RHS RA may be provided on any unit where the basic rent does not exceed what the basic rent would have been on that unit if RHS provided full financing. The number of RHS RA units available for participation loans is limited and established annually through subpart L of part 1940 of this chapter.

(b) *General conditions.* (1) The number of units that will serve RHS income-eligible tenants must equal or exceed the number of units financed by RHS, determined by dividing the RHS loan amount by the State's average new construction cost.

(2) The total funds provided by all sources may not exceed what is necessary to make the project feasible in accordance with §1944.213(a).

(3) The total debt from all sources is limited to the State Director's loan approval authority unless written authorization is obtained from the National Office in accordance with §1944.213(b).

(4) The complex will be operated and managed in compliance with RHS requirements and regulations.

(5) If Low Income Housing Tax Credits are anticipated on a proportion of units higher than the percentage receiving RA or similar tenant subsidy, the market study must clearly reflect a need and market for units without deep subsidy. It is not the intent of RHS to provide servicing RA in the future nor can RHS provide RA on units which have basic rents higher than those if RHS had provided full financing.

(c) *Design requirements.* Complexes must comply with the provisions of §§1944.215 and 1944.222.

(1) Design features such as patios or balconies, washers and dryers, and garbage disposals may be included if they

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are customary for the area and needed for marketability.

(2) Mixed income complexes may include nonessential common facilities such as swimming pools provided:

(i) The facility is not financed with RHS funds,

(ii) The complex is able to support the facility's operating and maintenance costs through collection of a user fee from tenants who subscribe to the service, and

(iii) The facility is designed and operated with appropriate safeguards for tenant health and safety.

(d) *Borrower contribution and return on investment.* (1) The minimum required borrower contribution will be based on the RHS loan amount and determined in accordance with §1944.213(b).

(2) For limited profit borrowers, additional funds exceeding the minimum required contribution that are provided from the borrower's own resources (not loans or grants from other sources) may be included in the borrower's initial investment, for purposes of determining return on investment, as provided in §1944.215(n).

(3) A loan from the borrower to the project may be considered, provided the loan proposal meets all conditions of this section and the loan to the project is from the borrower's own resources. LIHTC proceeds may be considered the borrower's own resources as provided in §1944.215(n)(1).

(e) *Reserve requirements.* RHS reserve requirements (the annual reserve requirement and the fully funded reserve amount) will be determined on a case-by-case basis, taking into consideration the reserve requirements of the other participating lenders, so that the *aggregate* fully funded reserve amount established by RHS and the other lenders equals at least 10 percent of the project's total development cost (TDC) or appraised value, whichever is greater. For example, if the other lenders do not have reserve requirements, RHS will establish its reserve requirements to meet the full aggregate amount (at least 10 percent of the TDC or appraised value of the project, whichever is greater), regardless of the RHS loan amount. On the other hand, if the other lenders have aggregate reserve requirements equal to or higher than the min-

imum 10 percent of TDC or appraised value required by RHS, and the amount is sufficient to meet project needs based on its capital improvement plan, it may not be necessary for RHS to establish additional reserve requirements. Reserve requirements and procedures for reserve withdrawals should be agreed upon by all lenders and included in the intercreditor or participation agreement referenced in paragraph (g) of this section.

(f) *Security requirements.* (1) RHS will take a first or parity lien in all instances where the Agency's participation is 50 percent or more.

(2) If RHS participation is less than 50 percent, every effort should be made to obtain a parity lien position. If a parity lien cannot be negotiated, an exception may be requested to accept a second lien position in accordance with §1944.240. The State Director will submit requests to accept a second lien position to the Deputy Administrator, Multi-Family Housing with comments and recommendations.

(3) RHS will take a first lien on project revenue from rent or occupancy payments; RHS, State, or private RA payments; and operating and reserve accounts.

(g) *Participation agreement.* RHS will enter into a participation (or intercreditor) agreement with the other lenders that clearly defines each party's relationship and responsibilities to the others.

[62 FR 25075, May 7, 1997, as amended at 62 FR 67223, Dec. 23, 1997]

§1944.234 Actions prior to loan approval.

Prior to loan approval the application will be reviewed for continued eligibility. The applicant may be required to submit updated information at that time.

[62 FR 25076, May 7, 1997]

§1944.235 Actions subsequent to loan approval.

(a) *Precommitment or closing actions.* After loan approval, the loan docket will be processed to the stage where a construction loan would normally be